

PATENT
Attorney Docket No. BGN-B191CPUSDV

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent No.: 7,427,403)
Inventors: BROWNING et al.)
Issue Date.: September 23, 2008)
For: METHODS FOR INHIBITING)
LYMPHOTOXIN-BETA RECEPTOR)
SIGNALLING)

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent must be filed within two months of the date the patent issues.

The U.S. Patent and Trademark Office (USPTO) issued U.S. Patent No. 7,427,403 on September 23, 2008, with a patent term adjustment (PTA) of 1009 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D.D.C. 2008) that the USPTO had made an error in the manner it determined PTA. Specifically, the court's decision relates to situations in which separate time periods of PTA accrue due to USPTO examination delay and those time periods do not overlap. The court ruled that in such

situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the USPTO's manner of PTA determination to date.

Patentee notes that both the PTO and Patentee made errors in their determination of PTA in the previous papers addressing this issue. Accordingly, the term adjustment currently applied to this patent is incorrect, regardless of whether the *Wyeth v. Dudas* standard is applied.

In the interest of accuracy (to correct errors made by the PTO in Patentee's favor) and justice (because Patentee is entitled under the rules to the full amount of adjustment requested), Patentee requests waiver of 37 C.F.R. § 1.705(d) to permit filing and consideration of the accompanying Application for Patent Term Adjustment - Post Grant, in which Patentee requests a change to the PTA to correct the errors made by both Patentee and the PTO, and to adjust the term in a manner consistent with the court's holding in *Wyeth v. Dudas*. This adjusted term is equal to at least 1221 days.

The required petition fee of \$400.00 under 37 C.F.R. § 1.17(f) is enclosed. If there are any other fees due in connection with the filing of this Petition, please change these fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 17, 2009

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